

JESSE SBAIH & ASSOCIATES, LTD.
Jesse M. Sbaih (#7898)
Ines Olevic-Saleh (#11431)
The District at Green Valley Ranch
170 South Green Valley Parkway, Suite 280
Henderson, Nevada 89012
Tel (702) 896-2529
Fax (702) 896-0529
jsbaih@sbaihlaw.com
iolevic@sbaihlaw.com

*Attorneys for Plaintiff, individually,
and all others similarly situated*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

NAYANANANDA RATNAYAKE,
individually, and on behalf others similarly
situated,

Plaintiff,

vs.

FARMERS INSURANCE EXCHANGE d/b/a
FARMERS; and DOES I – V and ROES VI – X,
inclusive;

Defendants.

Case No.: 2:11-cv-01668-APG-CWH

**PLAINTIFF’S MOTION FOR CLASS
CERTIFICATION**

(HEARING REQUESTED)

Comes now Plaintiff Nayanandana Ratnayake (“Mr. Ratnayake” or “Plaintiff”), by and through his counsel of record, Jesse M. Sbaih of Jesse Sbaih & Associates and moves this Honorable Court to certify a class of plaintiffs against Defendant Farmers Insurance Exchange d/b/a Farmers (hereafter “Farmers”) for failure to comply with NRS 687B.145.

I.

PRELIMINARY STATEMENT

This action provides Farmers with a golden opportunity to remedy the wrongs committed towards its Nevada insureds. Farmers has a legal and moral obligation to take advantage of this

1 opportunity by giving back funds it unlawfully, unfairly, and unreasonably collected/retained for many
2 years.

3 Specifically, the undisputed evidence before this Honorable Court reveals that, for many years,
4 Farmers engaged in a business pattern and practice that deprived Nevada insureds of *any* multi-vehicle
5 discount on UM/UIM premiums in violation of NRS 687B.145(1) and a July 19, 1993 Order by the
6 Nevada Insurance Commissioner.

7 Moreover, the undisputed evidence before this Honorable Court demonstrates that, for many
8 years, Farmers engaged in a business pattern and practice that deprived Nevada insureds of the *legally*
9 *required* 28% multi-vehicle discount on UM/UIM premiums in violation of NRS 687B.145(1) and a
10 July 19, 1993 Order by the Nevada Insurance Commissioner.

11 Finally, sworn evidence provided by Farmers in this litigation reveals that without the *legally*
12 *required* 28% multi-vehicle discount on UM/UIM premiums approved by the Nevada Insurance
13 Commissioner specifically to exclude stacking of UM/UIM coverages, Farmers is unable to prevent
14 stacking of UM/UIM coverage. However, as clearly proven by the undisputed documentary evidence
15 produced by Farmers in this litigation, Farmers has failed to provide *any* or the *legally required* 28%
16 UM/UIM multi-car discount to its Nevada insureds. As a result, Farmers has, for many years, engaged
17 in a business pattern and practice of depriving Class I Nevada insureds stackable UM/UIM coverage in
18 violation of NRS 687B.145(1) and a July 19, 1993 Order by the Nevada Insurance Commissioner.

19 Therefore, Mr. Ratnayake respectfully requests that this Honorable Court certify the following
20 three (3) subclasses:

21 Subclass A: All Nevada residents (1) who were, between September 8, 2005 to present,
22 insured by Farmers under multiple personal auto insurance policies; (2) whose
23 Farmers auto insurance policies included an anti-stacking endorsement; (3) who
24 were, under Nevada law, entitled to an anti-stacking discount on secondary
25 policies issued by Farmers due to the presence of an anti-stacking endorsement in
26 the auto policies; and (4) who were not provided with *any* anti-stacking discount
on their UM/UIM premiums on secondary policies issued by Farmers in violation
of NRS 687B.145(1) and a July 19, 1993 Order by the Nevada Insurance
Commissioner (the “**No UM/UIM Multi-Car Discount Subclass**”).

27 Subclass B: All Nevada residents (1) who were, between September 8, 2005 to present,
28 insured by Farmers under multiple personal auto insurance policies; (2) whose
Farmers auto insurance policies included an anti-stacking endorsement; (3) who
were, under Nevada law, entitled to an anti-stacking discount on secondary

1 policies issued by Farmers due to the presence of a anti-stacking endorsement in
 2 the auto policies; and (4) who were not provided the *legally required 28%* anti-
 3 stacking discount on their UM/UM premiums on secondary policies issued by
 4 Farmers in violation of NRS 687B.145(1) and a July 19, 1993 Order by the
 Nevada Insurance Commissioner (the “**Below 28% UM/UM Multi-Car
 Discount Subclass**”).

5 Subclass C: All Nevada residents (1) who were, between September 8, 2005 to present, Class
 6 I insureds and had more than one vehicle insured with Farmers (2) whose
 7 Farmers auto insurance policies included an anti-stacking endorsement; (3) who
 8 were, under Nevada law, entitled to an anti-stacking discount on secondary
 9 policies issued by Farmers due to the presence of an anti-stacking endorsement in
 10 their auto policies; (4) who were not provided *any* or the *legally required 28%*
 11 anti-stacking discount on their UM/UM premiums on secondary policies issued
 12 by Farmers in violation of NRS 687B.145(1) and a July 19, 1993 Order by the
 Nevada Insurance Commissioner; (5) who were injured in a motor vehicle
 13 accident; (6) who made a claim for UM/UM benefits from September 8, 2005
 14 to the present with Farmers; (7) who exhausted the UM/UM limits available
 15 on only one (1) of multiple household vehicles insured by Farmers; and (8)
 16 who did not receive stackable UM/UM benefits available on other household
 17 vehicles (the “**UM/UM Stacking Subclass**”).

18 II.

19 BACKGROUND

20 I. *Nevada’s Anti-Stacking Law*

21 Anti-stacking provisions in an insurance policy prevent insureds from combining their
 22 coverage limits on separate policies or automobiles. *See Bove v. Prudential Insurance Co.*, 106 Nev.
 23 682, 684, 799 P.2d 1108, 1109 (1990). Prior to 1979, all anti-stacking provisions were void under
 24 Nevada law. *Id.* at 685, 799 at 1110. However, in 1979, the Nevada legislature enacted NRS
 25 687B.145, which authorized anti-stacking provisions if particular requirements are met. *See* NRS
 26 687B.145(1).

27 In salient part, NRS 687B.145 states the following:

28Any provision which limits benefits pursuant to this section [Uninsured
 Motorist, Underinsured Motorist, and Medical Payments Coverage] ***must
 be in clear language and be prominently displayed in the policy, binder
 or endorsement. Any limiting provision is void if the named insured has
 purchased separate coverage on the same risk and has paid a premium
 calculated for full reimbursement under that coverage.***

NRS 687B.145(1)(emphasis added).

In interpreting NRS 687B.145(1), the Nevada Supreme Court stated the following:

1 To be valid under NRS 687B.145(1), ***an anti-stacking clause must meet***
2 ***three principal requirements***: the clause must express the limitation of
3 coverage in clear language (clarity requirement); the clause must be
4 prominently displayed in the policy or amendment (prominence
5 requirement); ***and the insured cannot have paid a full double premium***
6 ***for each of the two or more separate UM coverages (requirement***
7 ***prohibiting double premiums).***

8 *Torres v. Farmers Insurance Exchange*, 106 Nev. 340, 344, 793 P.2d 839, 842 (1990)(emphasis
9 added).

10 Furthermore, in Nevada, an insured has a reasonable expectation that she will receive
11 additional UM/UIM indemnification for each separate UIM premium paid. *Id.* at 346, 793 P.2d at
12 842-43. Thus, when the insurer attempts to defeat this reasonable expectation, it must prove the
13 validity of its anti-stacking provision in accordance with the requirements of NRS 687B.145(1). *Id.*,
14 793 P.2d at 843. The ***“burdens of persuasion and production on the issue of the validity of an anti-***
15 ***stacking clause prohibiting stacking of [UIM] coverage limits rest on the insurer.”*** *Id.* (emphasis
16 added).

17 Placing the burden of proof on the insurer is “especially appropriate” when determining
18 whether the insured purchased separate coverage for the same risk. *See Bove*, 106 Nev. at 687, 799
19 P.2d at 1111. Since the insurer has ready access to the documents necessary for determining whether
20 double premiums have been paid, and the expertise needed to explain and justify any added premiums,
21 it is reasonable that the insurer bears the duty of presenting such evidence to the court. *Id.*, 799 P.2d at
22 1111-12.

23 In *Serrett v. Kimber*, 110 Nev. 486, 874 P.2d 747 (1994), the Nevada Supreme Court was
24 called upon to decide, among other things, whether a Liberty Mutual insured purchased separate
25 coverage for the same UM risk and paid a premium calculated for full reimbursement under that
26 coverage. *Id.* at 491, 874 P.2d at 751. In doing so, the Nevada Supreme Court repeated that “the
27 ***burden of proving*** that Liberty did not violate the third prong of the test for avoiding the imposition of
28 stacking ***rests with Liberty.***” *Id.* (citation omitted) (emphasis added).

Despite the fact that the insured’s declaration page indicated that he may have been charged
separate premiums for UM/UIM coverage on each insured vehicle, Liberty Mutual, in support of its
contention that its insured was not charged a full premium, offered the affidavit of one of its

employees. *Id.* at 492, 874 P.2d at 751. In the affidavit, Liberty Mutual's employee stated that Liberty Mutual did not sell its insured two (2) separate UM/UIM coverages and that Liberty Mutual complied with NRS 687B.145 by charging the insured a "flat rate" for UM/UIM coverage. *Id.*

In reversing the order granting summary judgment in favor of Liberty Mutual, the Nevada Supreme Court held the following:

Although Liberty attempted to explain the actuarial basis for its premiums during oral argument, *it relied upon the above affidavit as its sole evidence that Serrett did not purchase separate coverage for the same risk for which he paid a premium calculated to provide full reimbursement under that coverage.* Given the rather arcane or cryptic justification for Liberty's billing, as presented to the district court and on appeal, we are compelled to conclude that summary judgment was improper. *Our decision in Bove contemplates the introduction of actual evidence that is possessed by the insurer.* Thus, *something more than an unsupported affidavit from a Liberty employee is required to meet the third requirement of NRS 687B.145(1).* See also *Clauson v. Lloyd*, 103 Nev. 432, 743 P.2d 631 (1987) (holding that a self-serving affidavit will not support summary judgment); *Catrone v. 105 Casino Corp.*, 82 Nev. 166, 171, 414 P.2d 106, 109 (1966) (affidavits are ineffective when they state "conclusion[s] without factual support in the record").

Id. at 492, 874 P.2d at 751 (emphasis added).

Similarly, in *Nationwide Mut. Ins. Co. v. Coatney*, 118 Nev. 180, 42 P.3d 265 (2002), the Nevada Supreme Court noted that the insurer in that case presented sufficient evidence to obtain summary judgment in its favor by (1) offering the testimony of its actuary concerning the method of calculating UM premiums in Nevada, and (2) "*actuarial tables and a summary of the model it used for UM premium pricing.*" *Id.* at 182, 42 P.3d at 266.

Most recently, the Honorable Judge Larry Hicks tackled an issue similar to the one before this Honorable Court. Specifically, in *Jackoby v. GEICO General Ins. Co.*, 2012 WL 3598817 (D.Nev. August 20, 2012), GEICO argued that its insured is not entitled to stack UM coverage available on his two (2) other vehicles because he paid a reduced UM premium on his two (2) other vehicles. *Id.* at *3. In finding in favor of GEICO, the Court noted that the following:

Here, it is undisputed that Jackoby *was charged reduced values for each successive auto policy with GEICO.* The evidence establishes that he was *charged \$94.80 for the first vehicle and a reduced rate of \$75.90 for the second and third insured vehicles.*

1 *Id.* (emphasis added). Stated differently, an insurer fails to meet its burden that an anti-stacking
 2 discount was given and *stacking of UM/UIM coverage must be allowed* if each secondary policy does
 3 not have the legally required UM/UIM premium discount.

4 **2. *Farmers' Purported Effort to Comply with Nevada's Anti-Stacking Law in the Early 1990s***

5 **a. *The Nevada Supreme Court Decides Torres and Bove in 1990***

6 On May 30, 1990, the Nevada Supreme Court decided *Torres*, 106 Nev. at 340, 793 P.2d 839
 7 at 842, a case that involved Farmers, the Defendant in this action. In *Torres*, the Nevada Supreme
 8 Court reiterated the three (3) NRS687B.145(1) requirements (clarity, prominence, and premium
 9 prohibition) for enforcing an anti-stacking provision. *Id.* at 344, 793 P.2d at 842.

10 On October 25, 1990, the Nevada Supreme Court decided *Bove*, 106 Nev. at 684, 799 P.2d at
 11 1109. In *Bove*, the Nevada Supreme Court also reiterated that an anti-stacking clause is only valid
 12 when "the insured must not have purchased separate coverage on the same risk nor paid a premium
 13 calculated for full reimbursement under that coverage." *Id.* at 685, 799 P.2d at 1110.

14 **b. *Farmers Becomes Concerned after Torres and Bove are Decided and Seeks Changes***
 15 ***to Increase its UM/UIM Multi-Car Discount from 10% to 28% in Lieu of Stacking***

16 On July 16, 1992, Farmers (concerned with its UM/UIM premium structure in light of the
 17 holdings in *Torres* and *Bove*), filed a Private Passenger Auto Rate and Rule Revision with the Nevada
 18 Department of Insurance ("Farmers' 1992 Rate Revision Filing"). A true and accurate copy of
 19 Farmers' 1992 Rate Revision Filing (which was recently produced by Farmers in this action) is
 20 attached hereto as *Exhibit 1*. In Farmers' 1992 Rate Revision Filing, Farmers stated the following:

21 We respectfully submit for filing revisions in our Private Passenger
 22 Automobile Rate and Rules. Our Proposed change is to ***increase our***
Uninsured Motorist Multi-Car Discount from 10% to 28%.

23 The purpose of this change is to comply with one of the three
 24 requirements of §687B.145, which states that any provision preventing the
 25 stacking of multiple policies ***is void*** if the named insured has paid a
 premium calculated for full reimbursement....

26 *Exhibit 1*, FIE12492 (emphasis added).

27 ///

28 ///

1 c. ***December 1, 1992 Public Hearing on Farmers' Request to Increase its UM/UIM***
 2 ***Multi-Car Discount from 10% to 28% in Lieu of Stacking UM/UIM Coverage***

3 On December 1, 1992, the Nevada Department of Insurance conducted a public hearing
 4 regarding Farmers' proposed increase of underinsured motorist multi-car discount from 10% to 28%
 5 sought in Farmers' 1992 Rate Revision Filing in lieu of stacking of UM/UIM coverage. *See* a true and
 6 accurate copy of the December 1, 1992 hearing transcript, which was recently produced by Farmers in
 7 this action ("December 1, 1992 Hearing Transcript") attached hereto as *Exhibit 2*.

8 During the December 1, 1992 hearing, Patricia Walker, the personal line Actuary for the
 9 Western Zone for Farmers Insurance Group and the person responsible for directing personal lines
 10 pricing in the thirteen (13) western states, testified on behalf of Farmers in support of increasing
 11 underinsured motorist multi-car discount from 10% to 28%. In so doing, Ms. Walker, in salient part,
 12 provided the following testimony:

13 The purpose of this change *is to comply with one of the three*
 14 *requirements of the Nevada Insurance Code Section 686B.445* which
 15 states that *any provisions preventing the stacking of the limits of multiple*
policies is void if the named insured has paid a premium calculated for full
 reimbursement.

16 *In order to comply with the aforementioned provision relating to*
 17 *premium calculation*, we estimated with our UIM rate calculation with
 18 the stacking of UM did not exist in Nevada. Recognizing that adopting a
 19 nonstacking provision should not effect single car policyholders *but the*
 20 *multiple car households would pose a lower exposure under a stacking*
environment, we are filing for an increase in our UM multi-car
discount.

21 We are proposing increasing the multi-car discounts from *ten percent to*
 22 *28 percent in Farmers* and five percent to 28 percent in Mid-Century
 [Insurance].

23 We did a study to determine the indicated UM multi-car discounts for
 24 *nonstacking states surrounding Nevada*. The states we looked at were
 25 Arizona, Oregon, Idaho and Utah. *The indicated discount which resulted*
 26 *from this study was 28.4 percent, so we elected to propose 28 percent in*
these filings.

27 *See Exhibit 2, FIE012473, lines 12-17; FIE012476, lines 2-9; FIE012478, lines 1-3; and FIE012478,*
 28 *lines 6-11 (emphasis added).*

1 ***d. The Nevada Insurance Commissioner Approves Farmers' Request to Increase its***
 2 ***UM/UIM Multi-Car Discount from 10% to 28% in Lieu of Stacking***

3 On July 19, 1993, Teresa P. Froncek Rankin, J.D. (Nevada's Insurance Commissioner at the
 4 time) issued an order regarding Farmers' proposed increase of underinsured motorist multi-car
 5 discount from 10% to 28% sought in Farmers' 1992 Rate Revision Filing ("Insurance Commissioner's
 6 July 19, 1993 Order"). A true and accurate copy of the Insurance Commissioner's July 19, 1993
 7 Order (which was recently produced by Farmers in this action) is attached hereto as *Exhibit 3*.

8 In the Insurance Commissioner's July 19, 1993 Order, the Nevada Insurance Commissioner, in
 9 approving Farmers' request to increase its multi-car discount from 10% to 28% in lieu of stacking,
 10 made the following Findings of Fact and Conclusions of Law:

11 **FINDINGS OF FACT**

12 1. Respondents sought a rate reduction based upon a rate design ***that***
 13 ***excludes stacking for uninsured motorist coverage (UM)***. See NRS
 690B.020.

14 2. NRS 687B.145 (2) requires both UM and underinsured motorist
 15 coverage (UIM) to comply with NRS 690B.020. Department Reference
 Nos. 171 and 173 are the relevant filings.

16 3. Respondents sought the rate changes based upon the holdings of
 17 two Nevada Supreme Court opinions, Torres v. Farmers Insurance
 18 Exchange, 106 Nev. 340, 793 P. 839 (1990), and Bove v. Prudential
 19 Property and Liability Insurance Company, et al., 106 Nev. 682, 799 P.2d
 20 1104 (1990). These opinions held that the insured could stack, based upon
 policy language that failed to satisfy statutory clarity requirements, and
 that the insurer has the burden of proof that its rates are designed for the
 risk assumed by the insurer.

21 4. The issue here is only the relative risk of non-stacking and
 22 ***stacking as measured by rates***.

23 5. ***Respondents contend that without a rate that specifically***
 24 ***excludes stacking of coverages, they are unable to prevent stacking of***
coverage.

25 6. Respondents provided the testimony of Patricia Walker, ACAS.
 26 Respondents have not provided company specific statistical support for
 27 this position. Respondents did provide 1989 data from the Automobile
 Insurance Research Advisory Council, as industry statistics. ***The statistics***
 28 ***indicated that UM-UIM payments are about 28 percent greater in***
stacking states than in non-stacking states. Respondents do not maintain
statistics on stacked claims.

7. Farmers rate request seeks an average reductions of 14.1 percent for UM coverage and 1.7 percent overall. The filing seeks for Mid-Century an average UM-UM reduction of 7.9 percent, and 6 percent overall.

8. The Farmers average reduction of 14.1 percent *is to be achieved by increasing the UM-UM multi-car discount to 28 percent from 10 percent*, with single car UM-UM rates remaining unchanged....

12. The Department's property/casualty actuary introduced State Farm Automobile Insurance Company data as evidence of his further research. *It is here noted that the 28 percent multi-car rate discounts are thus further justified.*

CONCLUSIONS OF LAW

1. Nevada law imposes upon insurers the obligation to define whether UM-UM may be stacked, and under what circumstances the coverages may not be stacked. *NRS 687B.145(2) requires both UM and UM coverage to comply with NRS 690B.020.* Insureds may purchase UM-UM motorist coverage equal to the limits of coverage for bodily injury coverage. The issue of stacking has occupied the courts and the Nevada Legislature for several years. *This order is intended to clarify the issue of stacking of policy limits of UM-UM coverages by establishing actuarially acceptable multi-car discounts for Respondents.*

2. The Department's property/casualty actuary recommended that rates approved by the commissioner which are specifically presented as *non-stacking*, as these are by Respondents, would probably be accepted under the rational of Bove, Supra, 106 Nev. 682.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, the testimony of the witness Patricia Walker, and the statistical support, *the 28 percent multi-car discounts as defined in Department Reference Nos. 171 and 173, are approved.* The policy language was approved by the Department in September 1992.

Exhibit 3, FIE012463-FIE012466 (emphasis added).

e. Patricia Walker's Affidavit Confirms that Farmers Fully Understood that it Must Increase its Multi-Car Discount from 10% to 28% in Order for Farmers' Anti-Stacking Endorsement to be Valid

On April 14, 1995, Patricia Walker, the same person who testified on behalf of Farmers at the December 1, 1992 public hearing, provided an affidavit relating to Farmers' 1992 Rate Revision Filing

1 (“Ms. Walker’s Affidavit”).¹ A true and accurate copy of Ms. Walker’s Affidavit (which was recently
2 produced by Farmers in this action) is attached hereto as *Exhibit 4*.

3 In Ms. Walker’s Affidavit, in salient part, Ms. Walker made the following *sworn*
4 representations regarding the 28% multi-car discount implemented in compliance with NRS
5 687B.145(1) and the Nevada Supreme Court holdings in *Torres* and *Bove*, *supra*:

6 7. That the rate Filing proposed an increase in Farmers Insurance
Exchange’s uninsured motorist ***multi-care discount from 10% to 28%***.

8 8. That ***the proposed policy change to eliminate stacking*** reduced
Farmer Insurance Exchange’s uninsured motorist rate need from 53.5% to
9 19.5% based upon a study of automobile claims in the United States by
the All-Industry Research Advisory Council (AIRAC), which indicated an
10 approximately ***28% difference in underinsured payments between***
stacking states and non-stacking states.

11 10. That the purpose of the proposed increase in Farmers Insurance
Exchange’s ***uninsured motorist multi-car discount*** was ***to comply with***
12 ***the “premium requirement” of NRS § 687B.145(1)***, which states that
13 “[a]ny limiting provision is void if the named insured has purchased
14 separate coverage on the same risk and has paid a premium calculated for
15 full reimbursement under that coverage.”

16 11. That the purpose of the proposed increase in Farmers Insurance
Exchange’s ***uninsured motorist multi-car discount*** was ***also to comply***
17 ***with the holdings of two Nevada Supreme Court decisions, Torres v.***
Farmers Ins. Exch., 106 Nev. 340, 793 P.2d 839 (1990), and ***Bove v.***
18 ***Prudential Ins. Co.***, 106 Nev. 632, 799 P.2d 1104 (1990).

19 13. That the methodology used in determining the proposed ***28%***
20 ***discount was consistent with actuarial guidelines*** regarding property and
casualty insurance rate....

21 14. That the methodology used in determining the ***proposed 28%***
22 ***discount was consistent with the requirements of Nevada Insurance***
23 ***Code §§ 686B.050 and 686B.060***.

24 15. That the methodology used in determining ***the proposed 28%***
25 ***discount was actuarially sound and reasonable***.

26
27
28 ¹ Farmers produced Ms. Walker’s affidavit in this action without providing any context for which the affidavit was prepared. Nonetheless, Ms. Walker’s sworn testimony in the subject affidavit is profoundly important in this case to illustrate, among other things, that Farmers understood its obligations under Nevada statutory and case law and the Insurance Commissioner’s July 19, 1993 Order.

19. That the **28% multi-car discount complies with the “premium discount” requirement of NRS 687B.145(1)** and the holdings of Torres and Bove, supra.

See *Exhibit 4*, FIE012492 (emphasis added).

3. Farmers’ Rampant and Blatant Violation of NRS 687B.145(1) and Utter Disregard for the Insurance Commissioner’s July 19, 1993 Order

In this action, Farmers has produced several spreadsheets as a small sampling of its UM/UM premium charges during the years 2006-2009. Indeed, the subject documents reveal that Farmers willfully violated NRS 687B.145(1) and the Insurance Commissioner’s July 19, 1993 Order by refusing to provide Nevada insureds *any* or the *legally required* 28% multi-car discount on secondary policies.

a. Farmers’ 2006 UM/UM Premium Charges Failed to Comply with Nevada’s Anti-Stacking Law

On October 14, 2011, Farmers attached to its Notice of Removal (Dkt. 1) only eleven (11) out of 3134 pages containing UM/UM premium charges data for its Nevada insureds for the year 2006 (“Farmers’ 2006 UM/UM Premium Sampling”). A copy of Farmers’ 2006 UM/UM Premium Sampling (with notes/calculations on the side of the page added by Plaintiff’s counsel for clarification purposes) is attached hereto as *Exhibit 5*.

In the small sampling produced by Farmers in this action for the year 2006, a total of 458 policies were listed of which 167 policies were initial policies (the first policy issued by Farmers for a household) and 264 were secondary policies (policies issued by Farmers for a household’s second, third, etc. covered vehicle). See a Summary of UM/UM Premium Charges Based on Farmers’ 2006 Sampling (prepared by Plaintiff’s counsel for this Honorable Court’s convenience) attached hereto as *Exhibit 6*. From the 2006 sampling provided, the following staggering numbers were deduced:

Number of Total Policies	458
Number of Initial Policies	167
Number of Secondary Policies	264
Number of Initial Policies not Followed by a Secondary Policy	27
Number of Secondary Policies where no discount from the Initial Policy UM/UM Premium was given	131
Percentage of Secondary Policies where no discount from Initial Policy UM/UM Premium was given (131/264)	49.62%

<i>Number of Secondary Policies where discount from the Initial Policy UM/UM Premium is less than 28%</i>	114
<i>Percentage of Secondary Policies where discount from the Initial Policy UM/UM Premium is less than 28% (114/264)</i>	43.18%
<i>Number of Secondary Policies where discount of 28% or more from the Initial Policy UM/UM Premium was given</i>	19
<i>Percentage of Secondary Policies where discount of 28% or more from the Initial Policy UM/UM Premium was given (19/264)</i>	7.20%
<i>Total Number of Secondary Policies Noncompliant with Nevada Anti-Stacking Law</i>	245
<i>Percentage of Secondary Policies Noncompliant with Nevada Anti-Stacking Law (245/264)</i>	92.80%

Therefore, based on the very small sampling data (only 11 out of 3134 pages) provided by Farmers for 2006, a staggering 92.80% (245/264) of secondary policies did not receive *any* or the *legally required* 28% UM/UM multi-car discount in violation of NRS 687B.145(1) and the Insurance Commissioner's July 19, 1993 Order. In addition, based on the sampling, at least 92.80% of Farmers' secondary policyholders were entitled to stack UM/UM coverage in 2006 due to Farmers' willful violation of Nevada's anti-stacking laws.

b. Farmers' 2007 UM/UM Premium Charges Failed to Comply with Nevada's Anti-Stacking Law

On October 14, 2011, Farmers attached to its Notice of Removal (Dkt. 1) only eleven (11) out of 2921 pages containing UM/UM premium charges data for its Nevada insureds for the year 2007 ("Farmers' 2007 UM/UM Premium Sampling"). A copy of Farmers' 2007 UM/UM Premium Sampling (with notes/calculations on the side of the page added by Plaintiff's counsel for clarification purposes) is attached hereto as *Exhibit 7*.

In the small sampling produced by Farmers in this action for the year 2007, a total of 490 policies were listed of which 181 policies were initial policies (the first policy issued by Farmers for a household) and 276 were secondary policies (policies issued by Farmers for a household's second, third, etc. covered vehicle). *See* a Summary of UM/UM Premium Charges Based on Farmers' 2007 Sampling (prepared by Plaintiff's counsel for this Honorable Court's convenience) attached hereto as *Exhibit 8*. From the 2007 sampling provided, the following staggering numbers were deduced:

<i>Number of Total Policies</i>	490
--	------------

1	Number of Initial Policies	181
2	Number of Secondary Policies	276
3	Number of Initial Policies not Followed by a Secondary Policy	33
4	Number of Secondary Policies where no discount from Initial Policy UM/UM Premium was given	126
5	Percentage of Secondary Policies where no discount from Initial Policy UM/UM Premium was given (126/276)	45.65%
6	Number of Secondary Policies where discount from Initial Policy UM/UM Premium is less than 28%	126
7	Percentage of Secondary Policies where discount from Initial Policy UM/UM Premium is less than 28% (126/276)	45.65%
8	Number of Secondary Policies where discount of 28% or more from Initial Policy UM/UM Premium was given	24
9	Percentage of Secondary Policies where discount of 28% or more from Initial Policy UM/UM Premium was given (24/276)	8.70%
10	Total Number of Secondary Policies Noncompliant with Nevada Anti-Stacking Law	252
11	Percentage of Secondary Policies Noncompliant with Nevada Anti-Stacking Law (252/276)	91.30%

Therefore, based on the very small sampling data (only 11 out of 2921 pages) provided by Farmers for 2007, a staggering 91.30% (252/276) of secondary policies did not receive *any* or the *legally required* 28% UM/UM multi-car discount in violation of NRS 687B.145(1) and the Insurance Commissioner's July 19, 1993 Order. In addition, based on the sampling, at least 91.30% of Farmers' secondary policyholders were entitled to stack UM/UM coverage in 2007 due to Farmers' willful violation of Nevada's anti-stacking laws.

c. Farmers' 2008 UM/UM Premium Charges Failed to Comply with Nevada's Anti-Stacking Law

On October 14, 2011, Farmers attached to its Notice of Removal (Dkt. 1) only eleven (11) out of 2175 pages containing UM/UM premium charges data for its Nevada insureds for the year 2008 ("Farmers' 2008 UM/UM Premium Sampling"). A copy of Farmers' 2008 UM/UM Premium Sampling (with notes/calculations on the side of the page added by Plaintiff's counsel for clarification purposes) is attached hereto as *Exhibit 9*.

In the small sampling produced by Farmers in this action for the year 2008, a total of 470 policies were listed of which 173 policies were initial policies (the first policy issued by Farmers for a household) and 261 were secondary policies (policies issued by Farmers for a household's second,

third, etc. covered vehicle). See a Summary of UM/UIM Premium Charges Based on Farmers' 2008 Sampling (prepared by Plaintiff's counsel for this Honorable Court's convenience) attached hereto as *Exhibit 10*. From the 2008 sampling provided, the following staggering numbers were deduced:

<i>Number of Total Policies</i>	470
<i>Number of Initial Policies</i>	173
<i>Number of Secondary Policies</i>	261
<i>Number of Initial Policies not Followed by a Secondary Policy</i>	36
<i>Number of Secondary Policies where no discount from Initial Policy UM/UIM Premium was given</i>	156
<i>Percentage of Secondary Policies where no discount from Initial Policy UM/UIM Premium was given (156/261)</i>	59.77%
<i>Number of Secondary Policies where discount from Initial Policy UM/UIM Premium is less than 28%</i>	83
<i>Percentage of Secondary Policies where discount from Initial Policy UM/UIM Premium is less than 28% (83/261)</i>	31.80%
<i>Number of Secondary Policies where discount of 28% or more from Initial Policy UM/UIM Premium was given</i>	22
<i>Percentage of Secondary Policies where discount of 28% or more from Initial Policy UM/UIM Premium was given (22/261)</i>	8.43%
<i>Total Number of Secondary Policies Noncompliant with Nevada Anti-Stacking Law</i>	239
<i>Percentage of Secondary Policies Noncompliant with Nevada Anti-Stacking Law (239/261)</i>	91.57%

Therefore, based on the very small sampling data (only 11 out of 2715 pages) provided by Farmers for 2008, a staggering 91.57% (239/261) of secondary policies did not receive *any* or the *legally required* 28% UM/UIM multi-car discount in violation of NRS 687B.145(1) and the Insurance Commissioner's July 19, 1993 Order. In addition, based on the sampling, at least 91.57% of Farmers' secondary policyholders were entitled to stack UM/UIM coverage in 2008 due to Farmers' willful violation of Nevada's anti-stacking laws.

d. Farmers' 2009 UM/UIM Premium Charges Failed to Comply with Nevada's Anti-Stacking Law

On October 14, 2011, Farmers attached to its Notice of Removal (Dkt. 1) only eleven (11) out of 2484 pages containing UM/UIM premium charges data for its Nevada insureds for the year 2009 ("Farmers' 2009 UM/UIM Premium Sampling"). A copy of Farmers' 2009 UM/UIM Premium

1 Sampling (with notes/calculations on the side of the page added by Plaintiff's counsel for clarification
2 purposes) is attached hereto as *Exhibit 11*.

3 In the small sampling produced by Farmers in this action for the year 2009, a total of 484
4 policies were listed of which 182 policies were initial policies (the first policy issued by Farmers for a
5 household) and 276 were secondary policies (policies issued by Farmers for a household's second,
6 third, etc. covered vehicle). See a Summary of UM/UIM Premium Charges Based on Farmers' 2009
7 Sampling (prepared by Plaintiff's counsel for this Honorable Court's convenience) attached hereto as
8 *Exhibit 12*. From the 2009 sampling provided, the following staggering numbers were deduced:

9	<i>Number of Total Policies</i>	484
10	<i>Number of Initial Policies</i>	182
11	<i>Number of Secondary Policies</i>	276
12	<i>Number of Initial Policies not Followed by a Secondary Policy</i>	26
13	<i>Number of Secondary Policies where no discount from Initial Policy UM/UIM Premium was given</i>	159
14	<i>Percentage of Secondary Policies where no discount from Initial Policy UM/UIM Premium was given (159/276)</i>	57.61%
15	<i>Number of Secondary Policies where discount from Initial Policy is less than 28%</i>	88
16	<i>Percentage of Secondary Policies where discount from Initial Policy UM/UIM Premium is less than 28% (88/276)</i>	31.88%
17	<i>Number of Secondary Policies where discount of 28% or more from Initial Policy UM/UIM Premium was given</i>	29
18	<i>Percentage of Secondary Policies where discount of 28% or more from Initial Policy UM/UIM Premium was given (29/276)</i>	10.51%
19	<i>Total Number of Secondary Policies Noncompliant with Nevada Anti-Stacking Law</i>	247
20	<i>Percentage of Secondary Policies Noncompliant with Nevada Anti-Stacking Law (247/276)</i>	89.49%

22 Therefore, based on very small sampling data (only 11 out of 2484 pages) provided by Farmers
23 for 2009, a staggering 89.49% (247/276) of secondary policies did not receive *any* or the *legally*
24 *required* 28% UM/UIM multi-car discount in violation of NRS 687B.145(1) and the Insurance
25 Commissioner's July 19, 1993 Order. In addition, based on the sampling, at least 89.49% of Farmers'
26 secondary policy holders were entitled to stack UM/UIM coverage in 2009 due to Farmers' willful
27 violation of Nevada's anti-stacking laws.
28

1 In sum, based on the small sampling from 2006-2009, 91.29% (983) of secondary
 2 policyholders insured with Farmers were not provided with *any* or received less than the *legally*
 3 *required* 28% UM/UIM multi-car discount in violation of NRS 687B.145(1) and the Insurance
 4 Commissioner's July 19, 1993 Order.

5 Consequently, there is no question that Farmers had a business pattern and practice (with a
 6 disturbing 91.29% accuracy and proficiency) of depriving its secondary policyholders in Nevada of
 7 multi-car UM/UIM discount in violation of Nevada's anti-stacking laws.

8 **4. *Farmers Failed to Stack UM/UIM Coverage in Violation of Nevada's Anti-Stacking Laws***

9 In Farmers' 1992 Rate Revision Filing, Farmers sought to increase its UM/UIM multi-car
 10 discount from 10% to 28% in order to comply with the "premium requirement" of Nevada's anti-
 11 stacking laws. *See Exhibit 1*. In the same filing, Farmers indicated/admitted that its anti-stacking
 12 provision would be "void" under Nevada law if the 28% discount is not approved. *Id.* During the
 13 December 1, 1992 public hearing, Farmers, in attempting to convince the Nevada Insurance
 14 Commissioner to approve the increase of its UM/UIM multi-car discount from 10% to 28%, also
 15 represented that said increase is necessary to comply with Nevada's anti-stacking laws. *See Exhibit 2*.

16 In the Insurance Commissioner's July 19, 1993 Order, in approving Farmers' request to
 17 increase the UM/UIM multi-car discount from 10% to 28%, the Nevada Insurance Commissioner
 18 stated that Farmers sought such specific rate in order to comply with Nevada's anti-stacking laws and
 19 that "***Respondents [Farmers] contend that without a rate [the 28% UM/UIM multi-car discount] that***
 20 ***specifically excludes stacking of coverages, they are unable to prevent stacking of coverage.***" *See*
 21 *Exhibit 3* (emphasis added).

22 On April 14, 1995, nearly two (2) years after the issuance of Insurance Commissioner's July
 23 19, 1993 Order, Patricia Walker, the same person who testified on behalf of Farmers at the December
 24 1, 1992 public hearing, provided sworn testimony that "the purpose of the proposed increase in
 25 Farmers Insurance Exchange's ***uninsured motorist multi-car discount*** [from 10% to 28%] ***was to***
 26 ***comply with the "premium requirement" of NRS § 687B.145(1)*** and "***to comply with the holdings***
 27 ***of two Nevada Supreme Court decisions, Torres v. Farmers Ins. Exch., 106 Nev. 340, 793 P.2d 839***
 28 ***(1990), and Bove v. Prudential Ins. Co., 106 Nev. 632, 799 P.2d 1104 (1990).***" *See Exhibit 4*, ¶ 10-11

(emphasis added). Ms. Walker added that “the **28% multi-car discount complies with the “premium discount” requirement of NRS 687B.145(1)** and the holdings of Torres and Bove, *supra*.” *See Id.*, ¶ 14 (emphasis added).

As fully discussed above, despite being fully aware of its obligations under Nevada’s anti-stacking laws, the evidence provided by Farmers in this litigation reveals that Farmers has a business pattern and practice of not providing its insureds with a UM/UIM multi-car discount as required by Nevada’s anti-stacking laws. Such blatant and willful violation of the law renders Farmers’ anti-stacking endorsement/provisions in its insurance policies “**void**” (a term specifically used by Farmers in its 1992 Rate Revision Filing with the Nevada Insurance Commissioner) and allows Class I insureds (named insureds in the Farmers policy or family members) to stack UM/UIM coverage available on other household vehicles insured by Farmers.

In its Notice of Removal (Dkt. 1), which was filed with the Court on October 14, 2011, Farmers made the following representations/observations:

In the years 2006-2009, there were ***at least 1,323 claims*** submitted by Farmers Insurance Exchange customers that insured more than one household vehicle for ***UM/UIM coverage***.

Of those 1,323 claims, approximately 439 had a total claim amount paid out that was equal to the highest UM/UM limits of a single vehicle in the household.

Because the amount paid on those claims equaled the policy limits, it is likely that the policy limits were exhausted for those claims. Therefore, ***those insureds are likely included in the Claims Sub-Classes defined by Plaintiff, as they allegedly should have been allowed to seek additional UM/UIM benefits on other household vehicles.***

See Dkt. 1 at 9 (emphasis added).

In support of its assertion that 439 Nevada insureds had “a total claim amount paid out that was equal to the highest UM/UIM limits of a single vehicle in the household” between 2006 through 2009, Farmers provided the affidavit of Janette L. Ferguson, Esq. (one of Farmers’ attorneys in this action) who reviewed the UM/UIM claims summaries for those years and highlighted the claims that would be eligible for stacking in the event Farmers failed to follow Nevada’s anti-stacking laws. A true and

1 accurate copy of Ms. Ferguson's affidavit and the highlighted 2006 through 2009 UM/UM claims
2 summaries are collectively attached hereto as *Exhibit 13*.

3 The 2006-2009 UM/UM claims summaries reviewed and highlighted by Ms. Ferguson are
4 organized differently from the 2006-2009 UM/UM claims summaries attached to the same Notice of
5 Removal (Dkt. 1) as part of the affidavit of Inder Sohi (a program manager for Management
6 Information Systems with Farmers). A true and accurate copy of Ms. Sohi's Affidavit and the 2006-
7 2009 UM/UM claims summaries are collectively attached hereto as *Exhibit 14*.

8 In order to ensure the accuracy of the number of potential Farmers' insureds who should have
9 been allowed to stack UM/UM benefits on other household vehicles between 2006 through 2009,
10 Plaintiff's counsel carefully reviewed, highlighted, and summarized the UM/UM claims summaries
11 attached to Ms. Sohi's affidavit. The results are as follows:

12 **-2006 UM/UM Claims (Document 1-11, which contains 8 pages)**

- 13 -2006 (page 1 of 8): 23 claims settled for UM/UM policy limits.
- 14 -2006 (page 2 of 8): 18 claims settled for UM/UM policy limits.
- 15 -2006 (page 3 of 8): 18 claims settled for UM/UM policy limits.
- 16 -2006 (page 4 of 8): 17 claims settled for UM/UM policy limits.
- 17 -2006 (page 5 of 8): 22 claims settled for UM/UM policy limits.
- 18 -2006 (page 6 of 8): 14 claims settled for UM/UM policy limits.
- 19 -2006 (page 7 of 8): 9 claims settled for UM/UM policy limits.
- 20 -2006 (page 8 of 8): 18 claims settled for UM/UM policy limits.

21 **Total 2006:** 139 claims settled for UM/UM policy limits *where stacking of UM/UM*
22 *coverage should have been allowed on other household vehicles.*

23 A true and accurate copy of Farmers' 2006 UM/UM Claims Summary (highlighted by Plaintiff's
24 counsel to identify relevant claims) is attached hereto as *Exhibit 15*.

25 **-2007 UM/UM Claims (Document 1-11, which contains 7 pages)**

- 26 -2007 (page 1 of 7): 20 claims settled for UM/UM policy limits.
- 27 -2007 (page 2 of 7): 23 claims settled for UM/UM policy limits.
- 28 -2007 (page 3 of 7): 21 claims settled for UM/UM policy limits.
- 2007 (page 4 of 7): 12 claims settled for UM/UM policy limits.
- 2007 (page 5 of 7): 17 claims settled for UM/UM policy limits.
- 2007 (page 6 of 7): 15 claims settled for UM/UM policy limits.
- 2007 (page 7 of 7): 15 claims settled for UM/UM policy limits.

Total 2007: 123 claims settled for UM/UM policy limits *where stacking of UM/UM*
coverage should have been allowed on other household vehicles.

1 A true and accurate copy of Farmers' 2007 UM/UM Claims Summary (highlighted by Plaintiff's
2 counsel to identify relevant claims) is attached hereto as *Exhibit 16*.

3 **-2008 UM/UM Claims (Document 1-11, which contains 6 pages)**

- 4 -2008 (page 1 of 6): 26 claims settled for UM/UM policy limits.
5 -2008 (page 2 of 6): 21 claims settled for UM/UM policy limits.
6 -2008 (page 3 of 6): 13 claims settled for UM/UM policy limits.
7 -2008 (page 4 of 6): 21 claims settled for UM/UM policy limits.
8 -2008 (page 5 of 6): 17 claims settled for UM/UM policy limits.
9 -2008 (page 6 of 6): 10 claims settled for UM/UM policy limits.

10 **Total 2008:** 108 claims settled for UM/UM policy limits *where stacking of UM/UM*
11 *coverage should have been allowed on other household vehicles.*

12 A true and accurate copy of Farmers' 2008 UM/UM Claims Summary (highlighted by Plaintiff's
13 counsel to identify relevant claims) is attached hereto as *Exhibit 17*.

14 **-2009 UM/UM Claims (Document 1-11, which contains 5 pages)**

- 15 -2009 (page 1 of 5): 30 claims settled for UM/UM policy limits.
16 -2009 (page 2 of 5): 24 claims settled for UM/UM policy limits.
17 -2009 (page 3 of 5): 24 claims settled for UM/UM policy limits.
18 -2009 (page 4 of 5): 21 claims settled for UM/UM policy limits.
19 -2009 (page 5 of 5): 0 claims settled for UM/UM policy limits.

20 **Total 2009:** 99 claims settled for UM/UM policy limits *where stacking of UM/UM*
21 *coverage should have been allowed on other household vehicles.*

22 A true and accurate copy of Farmers' 2009 UM/UM Claims Summary (highlighted by Plaintiff's
23 counsel to identify relevant claims) is attached hereto as *Exhibit 18*.

24 Therefore, based on the data provided by Farmers in this action for the shortened time period
25 of 2006 through 2009, there were at least 469 claims settled for UM/UM policy limits where stacking
26 of UM/UM coverage available on other household vehicles should have been allowed by Farmers.

27 **5. *Farmers Ostensibly Stacked UM/UM Coverage on Prior Occasions upon a Likely***
28 ***Challenge by its Insureds to its Unlawful Anti-Stacking Practices***

Strangely, although Farmers has been adamant during this litigation that it does not stack
UM/UM coverage, Farmers' own records reveal otherwise.

Specifically, in 2006, Farmers paid **\$740,000.00 on three (3) policies with 250/500 UM/UM**
limits. See page 2 of 8 of Farmers' 2006 Claims Summary (highlighted by Plaintiff's counsel to
identify the subject claim) attached separately hereto as *Exhibit 19*. Thus, Farmers ostensibly agreed to

1 stack UM/UIM coverage for that insured by stacking UM/UIM coverage on all three (3) household
2 vehicles.

3 Moreover, in 2007, Farmers had at least four (4) instances where it ostensibly stacked
4 UM/UIM coverage for its insureds. For example, Farmers paid ***\$100,000.00 on five (5) policies with***
5 ***50/100 UM/UIM limits.*** See page 1 of 7 of Farmers' 2007 Claims Summary (highlighted by
6 Plaintiff's counsel to identify the subject claim) attached separately hereto as *Exhibit 20*. Thus,
7 Farmers ostensibly agreed to stack UM/UIM coverage for that insured by stacking UM/UIM coverage
8 on two (2) of the five (5) household vehicles.

9 In another claim in 2007, Farmers paid ***\$475,000.00 on three (3) policies with 250/500***
10 ***UM/UIM limits.*** See page 2 of 7 of Farmers' 2007 Claims Summary (highlighted by Plaintiff's
11 counsel to identify the subject claim) attached separately hereto as *Exhibit 21*. Thus, Farmers
12 ostensibly agreed to stack UM/UIM coverage for that insured by stacking UM/UIM coverage on two
13 (2) of the three (3) household vehicles.

14 In yet another claim in 2007, Farmers paid ***\$50,000.00 on two (2) policies with 30/60***
15 ***UM/UIM limits*** and a third vehicle with 25/50. See page 4 of 7 of Farmers' 2007 Claims Summary
16 (highlighted by Plaintiff's counsel to identify the subject claim) attached separately hereto as *Exhibit*
17 *22*. Thus, Farmers ostensibly agreed to stack UM/UIM coverage for that insured by stacking
18 UM/UIM coverage on two (2) of the three (3) household vehicles.

19 Finally, Farmers paid ***\$125,000.00 on two (2) policies with 100/300 UM/UIM limits.*** See page
20 5 of 7 of Farmers' 2007 Claims Summary (highlighted by Plaintiff's counsel to identify the subject
21 claim) attached separately hereto as *Exhibit 23*. Thus, Farmers ostensibly agreed to stack UM/UIM
22 coverage for that insured by stacking UM/UIM coverage on two (2) household vehicles.

23 Such conduct by Farmers in ostensibly stacking UM/UIM coverage is profoundly significant
24 because it demonstrates that Farmers knew or should have known that its anti-stacking endorsement is
25 invalid due to its failure to provide its insureds the UM/UIM multi-car discount required by law and,
26 as a result, that it must stack UM/UIM coverage. Indeed, had Farmers for one minute believed that its
27 anti-stacking endorsement was on solid footing, it would not have stacked UM/UIM coverage for any
28

1 of its insureds. Nonetheless, when ostensibly challenged with the law by a few insureds, Farmers
2 caves in and pays out the stackable benefits it is required to under the law.

3 At this time, due to its rampant and willful violation of Nevada's anti-stacking laws, Farmers
4 must treat Mr. Ratnayake and all others similarly situated in the same fair and reasonable manner it
5 treated the five (5) insureds discussed above. Stated differently, Farmers must allow stacking of
6 UM/UIM coverage for all insureds who did not receive the legally required 28% UM/UIM multi-car
7 discount during the class period of September 8, 2005 to the present.

8 **6. This Honorable Court's October 11, 2013 Order**

9 On October 3, 2012, Farmers filed a Motion for Judgment on the Pleadings in which it
10 contended that its anti-stacking endorsement was enforceable under Nevada law. (Dkt. 29). On
11 October 19, 2012, Mr. Ratnayake filed a countermotion for summary judgment on his First and Fifth
12 Claims for Relief (underinsured motorist and declaratory relief). (Dkt. 33).

13 On October 11, 2013, this Honorable Court entered an Order Denying Defendant's Motion for
14 Judgment on the Pleadings and Denying Plaintiff's Motion for Partial Summary Judgment (October
15 11, 2013 Order"). (Dkt. 43). In the October 11, 2013 Order, this Honorable Court made the following
16 findings of facts and conclusions of law:

17 During the relevant time period, Ratnayake had three separate policies
18 with Farmers—one for each of his family's cars. The policies for his
19 Honda, Nissan, and Toyota were effective on January 22, 2010, April 11,
20 2010, and April 20, 2010, respectively.

21 Each policy included uninsured motorist ("UM") coverage for bodily
22 injury in the amount of \$50,000 for each person and \$100,000 for each
23 occurrence ("50/100 coverage").

24 Ratnayake *paid a separate premium for UM coverage in each policy*:
25 \$43.30 in the Honda policy; \$110.00 in the Nissan policy; and \$150.30 in
26 the Toyota policy.

27 Each policy also contained the same exclusions to the UM coverage and
28 an Endorsement that purported to prohibit any stacking of UM coverages
(the "Endorsement").

On May 21, 2010 Ratnayake was in an accident while driving his Honda
and allegedly suffered severe injuries. The tortfeasor was underinsured to
cover Ratnayake's alleged damages.

1 Ratnayake sought coverage under each policy's UIM provision (which
 2 included UIM coverage), asserting that each policy provided separate
 3 coverage for his injuries. Farmers paid him \$50,000 under the Honda
 4 policy but refused to pay UIM coverage under the Nissan and Toyota
 5 policies. ***Farmers asserted that the Endorsement was a valid anti-
 stacking limitation*** that limited Ratnayake's recovery to the UIM limit
 under the policy that covered the particular car he was driving during the
 accident: the Honda policy.

6 For the purposes of UM/UIM coverage, Class I insureds include the
 7 named insured on the Farmers auto policy or a family member. Class I
 8 insureds enjoy ***UM/UIM coverage regardless of what vehicle they are in.***
There is no dispute that Ratnayake is a Class I insured.

9 ***The policies allow Class I insureds to stack the 15/30 coverage amounts***
 10 ***but prohibit stacking for any amounts over that. Farmers agrees with***
this interpretation.

11 ***[E]ach policy provided coverage for the same risk: that a Class I insured***
 12 ***would be injured by an uninsured or underinsured motorist while the***
 13 ***insured is in any of three insured vehicles.***

14 For the Endorsement to be valid and prohibit stacking...Farmers must
 15 prove that Ratnayake did not pay separate premiums under each policy for
 that same coverage. ***Farmers has failed to do this.***

16 The policies show separate UM premiums, ***but they are not lower in each***
 17 ***successive policy.*** Indeed, the opposite is true, as they rose from \$43.30
 18 for the Honda on January 22, 2010 to \$150.70 for the Toyota on April 20,
 2010.

19 Farmers supplying base rates for UM premiums ***is insufficient*** to prove
 20 that Ratnayake did not pay separate premiums for the same risk.

21 ***Only two of the three policies*** submitted as exhibits by Farmers state that
 22 the UM premium is discounted because of limitations on stacking.

23 Although these statements in the policy declarations, standing alone, are
 24 insufficient to prove that the discounts were actually applied to the UM
 25 premiums, the inconsistency among the policies weighs against Farmers.
***Farmers has failed to prove that the Endorsement is a valid anti-
 stacking limitation as a matter of law.***

26 *See* (Dkt. 43) (emphasis added).

27 In summary, in its October 11, 2013 Order, this Honorable Court found that all three (3)
 28 policies issued by Farmers to Mr. Ratnayake provided him coverage for the same risk: being injured
 by an uninsured or underinsured motorist while occupying any of the three (3) household vehicles. In

1 addition, this Honorable Court determined that, as a Class I insured, Mr. Ratnayake would be entitled
2 to stack UM/UIM coverage on the other two (2) household vehicles but was limited to \$15,000.00 in
3 UIM coverage on those vehicles if it is determined that Farmers' anti-stacking endorsement is invalid.
4 Farmers was unable to prove that Mr. Ratnayake received a discount on his UM/UIM premiums. As a
5 result, this Honorable Court determined that "Farmers has failed to prove that the Endorsement is a
6 valid anti-stacking limitation as a matter of law." *Id.*

7 Indeed, similar to the 983 secondary policyholders who were deduced from the very small
8 2006-2009 sampling provided by Farmers in this litigation, Farmers has not been able to prove that
9 Mr. Ratnayake received *any* or the *legally required* 28% UM/UIM multi-car discount since Mr.
10 Ratnayake paid a higher premium on each secondary policy he purchased from Farmers.

11 Moreover, similar to the 469 secondary policyholders that settled for the UM/UIM policy
12 limits available on one of the multiple household vehicles insured by Farmers from 2006 through
13 2009, Mr. Ratnayake was not allowed by Farmers to stack UM/UIM coverage available on his other
14 household vehicles.

15 III.

16 LEGAL ARGUMENT

17 Plaintiff moves this Court for certification of a class under FRCP 23(b)(3) because the
18 questions of law or fact predominate over any question affecting only individual members and the
19 class action is a superior method to affect fair and efficient adjudication of this controversy, which
20 involves the statutory construction of the insurance company's obligation to stack UM/UIM coverage
21 in accordance with NRS 687B.145(1) and the Insurance Commissioner's July 19, 1993 Order.

22 In determining whether a class is an appropriate method for adjudication of the controversy
23 under FRCP 23(b)(3), the Manual for Complex Litigation, Fourth (2010), Section 21.141 provides that
24 the Court should consider 3 criteria regarding the merits of the proposed class and scrutinize the
25 proposed class representative. *Id.* at p. 370–371. The factors to consider are: numerosity,
26 commonality, and typicality. These three (3) criteria explore whether the class action method is
27 appropriate because common questions of law or fact predominate the legal issues and whether a class
28 action is the superior method for adjudicating the controversy at issue for all involved. In addition, the

1 Court is asked to consider the adequacy of representation of the class by proposed class representative,
2 Mr. Ratanayke, and the appropriateness of class counsel Jesse M. Sbaih (Plaintiff's counsel herein).

3 **A. NUMEROSITY**

4 Numerosity is established by affidavit, declaration, or discovery in the case. Manual for
5 Complex Litigation, Fourth (2010), Section 21.141 at p. 370–371.

6 In the present case, based on the small sampling provided by Farmers in this litigation for the
7 years 2006-2009, there were 983 secondary policyholders who did not receive *any* or the *legally*
8 *required* 28% UM/UIM multi-car discount as required by NRS 687B.145(1) and the Insurance
9 Commissioner's July 19, 1993 Order. Thus, at the present time, there are at least 983 putative class
10 members.

11 The exact number of putative class members will be easily and readily ascertained once
12 Farmers discloses all data for UM/UIM premiums paid by its secondary policyholders from September
13 8, 2005 to the present (the "Class Period"). At that time, Plaintiff expects the number of the putative
14 class members in "No UM/UIM Multi-Car Discount Subclass" and the "Below 28% UM/UIM Multi-Car
15 Discount Subclass" to exceed 10,000, which would more than satisfy the numerosity requirement.

16 Regarding the "UM/UIM Stacking Subclass," based on the 2006 through 2009 UM/UIM Claims
17 Summaries produced by Farmers in this litigation, Plaintiff is presently aware of at least 469
18 policyholders who would be eligible for stacking of UM/UIM benefits. Once Farmers discloses all data
19 for UM/UIM claims processed from September 8, 2005 to the present, Plaintiff expects that the
20 number of putative class members in the "UM/UIM Stacking Subclass" to exceed 1,500, which also
21 would easily satisfy the numerosity requirement.

22 Therefore, Plaintiff respectfully submits that numerosity has been established for purposes of
23 class certification.

24 **B. COMMONALITY**

25 Assessing the commonality of claims and defenses requires examining the Complaint and
26 looking behind the certification motion to glance at the merits of the underlying claims. *Kelley V.*
27 *Microsoft Corp.*, 251 F.R.D. 544 (W.D. Wash 2008) *citing* Manual for Complex Litigation, Fourth
28 (2010), Section 21.141.

1 In the present case, Plaintiff's Complaint alleges class claims for underinsured motorist
 2 (breach of contract); breach of the implied covenant of good faith and fair dealing (common law bad
 3 faith); unfair claims practices under NRS 686A.310(1)(a), (c), and (f); unjust enrichment for Farmers
 4 retaining funds that belong to the class; and declaratory relief. These claims are necessary to obtain
 5 redress for Farmers' violation of the "premium requirement" of NRS 687B.145(1) and the Insurance
 6 Commissioner's July 19, 1993 Order.

7 The proposed subclasses would include only those insureds who did not receive the benefit of
 8 the statutory protection provided by NRS 687B.145(1) and the Insurance Commissioner's July 19,
 9 1993 Order. Hence, the legal wrong suffered by each class member is identical. With respect to
 10 damages of each class member, the amount suffered by each class member would be calculated by the
 11 same formula: the amount of the UM/UIM multi-car discount that Farmers did not provide (for the
 12 "No UM/UIM Multi-Car Discount Subclass" and the "Below 28% UM/UIM Multi-Car Discount
 13 Subclass") and stackable UM/UIM benefits up to \$15,000.00 for each secondary policies (for the "No
 14 Stacking Subclass), plus interest and attorney's fees.

15 **C. TYPICALITY**

16 Determining typicality requires deciding whether the named plaintiff's claims arise from the
 17 same course of events and involves legal arguments similar to all other class members and the court
 18 must decide the proposed representative's claims. *Gen. Tel. Co. v. Falcon*, 457 U.S. 147 (1982)
 19 (rejecting claim of employee denied promotion as not typical of class of applicants for work.). In
 20 addition, the Court should ensure that the proposed named plaintiff's claims are not subject to defenses
 21 that do not apply to other members of the class. *Manual for Complex Litigation*, Fourth (2010),
 22 Section 21.141.

23 The claims of Plaintiff Ratnayake arise directly from NRS 687B.145(1) and the Insurance
 24 Commissioner's July 19, 1993 Order and the failure of Farmers to provide *any* or the *legally required*
 25 28% UM/UIM multi-car discount to Nevada policyholders who had multiple vehicles in their
 26 household insured with Farmers, as did Mr. Ratnayake. The three (3) subclasses are defined as
 27 follows:

28 Subclass A: All Nevada residents (1) who were, between September 8, 2005 to present,
 insured by Farmers under multiple personal auto insurance policies; (2) whose

Farmers auto insurance policies included an anti-stacking endorsement; (3) who were, under Nevada law, entitled to an anti-stacking discount on secondary policies issued by Farmers due to the presence of an anti-stacking endorsement in the auto policies; and (4) who were not provided with *any* anti-stacking discount on their UM/UIM premiums on secondary policies issued by Farmers in violation of NRS 687B.145(1) and a July 19, 1993 Order by the Nevada Insurance Commissioner (the “**No UM/UIM Multi-Car Discount Subclass**”).

Subclass B: All Nevada residents (1) who were, between September 8, 2005 to present, insured by Farmers under multiple personal auto insurance policies; (2) whose Farmers auto insurance policies included an anti-stacking endorsement; (3) who were, under Nevada law, entitled to an anti-stacking discount on secondary policies issued by Farmers due to the presence of a anti-stacking endorsement in the auto policies; and (4) who were not provided the *legally required* 28% anti-stacking discount on their UM/UIM premiums on secondary policies issued by Farmers in violation of NRS 687B.145(1) and a July 19, 1993 Order by the Nevada Insurance Commissioner (the “**Below 28% UM/UIM Multi-Car Discount Subclass**”).

Subclass C: All Nevada residents (1) who were, between September 8, 2005 to present, Class I insureds and had more than one vehicle insured with Farmers (2) whose Farmers auto insurance policies included an anti-stacking endorsement; (3) who were, under Nevada law, entitled to an anti-stacking discount on secondary policies issued by Farmers due to the presence of an anti-stacking endorsement in their auto policies; (4) who were not provided *any* or the *legally required* 28% anti-stacking discount on their UM/UIM premiums on secondary policies issued by Farmers in violation of NRS 687B.145(1) and a July 19, 1993 Order by the Nevada Insurance Commissioner; (5) who were injured in a motor vehicle accident; (6) who made a claim for UM/UIM benefits from September 8, 2005 to the present with Farmers; (7) who exhausted the UM/UIM limits available on only one (1) of multiple household vehicles insured by Farmers; and (8) who did not receive stackable UM/UIM benefits available on other household vehicles (the “**UM/UIM Stacking Subclass**”).

D. PREDOMINATE

A class action is the approved method for resolving small, individual claims where the common issues of law and fact predominate the individual issues that may arise, including the claims and/or defenses. In cases such as the present case that involved relatively small economic damage, the United States Supreme Court indicated that a class action is the appropriate method for adjudicating the collection of small claims. In *Amchen Prod., Inc. v. Windsor*, 521 U.S. 591, 616 (1997), the Supreme Court stated, “[t]he policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for an individual to bring a sole action prosecuting his or her rights.”

1 In the present case, the recovery for each class member in the “No UM/UIM Multi-Car
2 Discount Subclass” and the “Below 28% UM/UIM Multi-Car Discount Subclass” will be limited to the
3 difference between the actual discount provided by Farmers (if any) and the 28% UM/UIM multi-car
4 discount Farmers was legally obligated to provide on each secondary policy it issued. As to the
5 “UM/UIM Stacking Subclass,” each class member will be allowed to stack UM/UIM coverage on other
6 household vehicles insured by Farmers at the time of his/her motor vehicle accident and recover up to
7 \$15,000.00 on each policy.

8 **E. SUPERIORITY**

9 A class action against Farmers in this matter is the superior method for resolving the claims for
10 statutory violation by the insureds at issue herein. Any method other than a class action would lead to
11 the potential of inconsistent rulings, disparate treatment to the insureds, incomplete resolution for the
12 insureds, and a failure to obtain a change in policy and procedure of Farmers to comport with the
13 statutory requirements. To Farmers’ benefit, a class action will provide it the opportunity to resolve all
14 claims in one forum by its own insureds on the statutory issue, and to avoid multiple bad faith verdicts
15 against it for its willful and blatant violation of the “premium requirement” of NRS 687B.145(1) and
16 the Insurance Commissioner’s July 1993 Order. Hence, a class action is the most efficient, cost-
17 effective, and manageable process by which to adjudicate the first-party claims against Farmers for
18 violating the statute at issue.

19 **F. MANAGEABILITY OF CLASS**

20 The proposed class will be manageable because it will consist of individual insureds seeking
21 recovery for a violation of a statutory right. There will be little or no involvement by the Court with
22 class issues during the course of discovery in preparation for trial because the class is discrete, defined,
23 and limited in scope to just those individuals affected by the statutory violation from September 8,
24 2005 to the present. Moreover, resolution of the merits (if any) most likely will be undertaken by
25 summary judgment motion after discovery.

26 The core conflict to be resolved centers around whether Farmers complied with “premium
27 requirement” of NRS 687B.145(1) and the Insurance Commissioner’s July 1993 Order, which
28 Farmers’ own documentary evidence produced in this case reveals that it did not comply with. If the

1 class prevails, then Farmers will be saddled with the burden to execute an appropriate plan for
2 settlement and distribution.

3 **G. ADEQUACY OF REPRESENTATION BY THE PROPOSED PLAINTIFF**

4 To be an appropriate representative for a class action, the named plaintiff need only “have a
5 basic understanding about the lawsuit” and “need not be intimately familiar with every factual and
6 legal aspects” of the litigation. *Morris V. Trans Fin. Corp.*, 175 F.R.D. 694, 698 (M.D. Ala. 1997).

7 Throughout this litigation, Mr. Ratnayake has faithfully and diligently participated by
8 appearing for a lengthy deposition and cooperating with Plaintiff’s counsel whenever called upon. Mr.
9 Ratnayake will indeed represent the class vigorously and accurately to bring about a change of
10 Farmers’ present policies and procedures and to secure compensation to those insureds harmed by
11 Farmers’ violation of the “premium requirement” of NRS 687B.145(1) and the Insurance
12 Commissioner’s July 1993 Order.

13 **H. CLASS COUNSEL**

14 The undersigned counsel who presently represent the Plaintiff respectfully request that the
15 Court appoint them as class counsel in this matter. As the treatise on complex cases recognizes, “in
16 many cases, the lawyers who filed this suit will be the obvious or only choice to be appointed counsel
17 for the class. In such cases, the judge’s task is to determine whether the applicant is able to provide
18 adequate representation for the class in light of FRCP Rule 23(g)(1)(C) factors.” *Manual for Complex*
19 *Litigation*, Fourth (2010), Section 21.271 at p. 395.

20 The identification and appointment of proper class counsel is handled by evaluating the factors
21 outlined in FRCP Rule 23(g)(1)(C), which in the present case points directly to the undersigned
22 counsel for the following reasons:

23 (A)(i) The undersigned counsel have worked diligently to identify the statutory violations in
24 this matter, conducted a review of the legislative history, conducted discovery against the Defendant to
25 show the Defendant’s course of conduct in dealing with its insureds over time on this issue, to assist
26 the Court’s inquiry on the scope of the proposed class;

27 (A)(ii) The proposed counsel are experienced in handling these types of claims. Based on the
28 affidavit of Jesse Sbaih, attached hereto as *Exhibit 24*, counsel has over 12 years of experience in

1 handling complex insurance disputes involving UM/UIM and other coverages, and handling complex
2 litigation matters;

3 (A)(iii) The applicable law is found in both the Nevada statutes and the Federal Rules of Civil
4 Procedure. Proposed counsel for the class has years of experience handling matters in federal court
5 and dealing with Nevada statutes and particularly laws and regulations governing insurance claims.

6 (A)(iv) If the matter is not amicably resolved, the proposed counsel is ready, willing and able
7 to take this matter to trial, including exemplary damages to be levied against the Defendant for
8 violating a statutory obligation;

9 To that end, Jesse Sbaih & Associates is a fully functioning law firm with an outstanding and
10 bright young associate and other hard-working and highly dedicated staff, which has the resources and
11 the will-power to handle and manage in a timely manner the demands of discovery and trial in this
12 matter.

13 **NOTICE OF PROPOSED CLASS**

14 Attached hereto as *Exhibit 25*, *Exhibit 26*, and *Exhibit 27* are the proposed notices to all
15 prospective members of three (3) subclasses with the information to opt-out for each subclass.
16 Plaintiff respectfully requests that the Court issue a briefing schedule to address the manner and
17 method of notice to be provided to members of each subclass, and the maintenance of the selection to
18 opt-out of the subclass by any individuals.

19 **IV.**

20 **CONCLUSION**

21 Based on the foregoing, Mr. Ratnayake respectfully requests this Court certify the class as
22 described above, appoint him as a representative of the class, appoint the proposed class counsel as
23 indicated, and order that notice of the proposed class be provided to prospective class members.

24 DATED this 3rd day of February, 2014.

25 JESSE SBAIH & ASSOCIATES, LTD.

26 By /s/ Jesse M. Sbaih

27 Jesse M. Sbaih (#7898)

Ines Olevic-Saleh (#11431)

170 South Green Valley Parkway, Suite 280

Henderson, Nevada 89012

Attorneys for Plaintiff and all others similarly situated

CERTIFICATE OF SERVICE

Pursuant to FRCP Rule 5(b), I certify I am an employee of the law firm of Jesse Sbaih & Associates, Ltd., and that on this date, I caused **PLAINTIFF'S MOTION FOR CLASS CERTIFICATION** to be served via electronic service to the following:

J. Christopher Jorgensen
LEWIS ROCA ROTHBERGER
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
Telephone: (702) 949-8200
Facsimile: (702) 949-8398

Thomas P. Jonson, Esq.
Janette L. Ferguson, Esq.
Kimberly Spiering, Esq.
DAVIS GRAHAM & STUBBS LLP
1550 Seventh Street, Suite 500
Denver, CO 80202
Attorneys for Defendant
Farmers Insurance Exchange dba Farners

DATED this 3rd day of February, 2014.

/s/ Jennifer Herald
An employee of JESSE SBAIH & ASSOCIATES, LTD.